

Appl. No. 09/977,930  
Amdt. dated Nov. 18, 2005  
Reply to Office action of Sep. 20, 2005

## REMARKS/ARGUMENTS

### 35 USC § 102(b)

**Claims 1-2 and 4-6** were rejected under 35 USC § 102(b) as being anticipated by Robinson et al. (U.S. Pat. No. 5,374,395). The Applicant respectfully disagrees.

It is stressed to the Office that amended claim 1 expressly requires that "...the fluid discharge port is configured to *emit a continuous flow* of the biological fluid that is at least partially depleted of the target antigen *while at the same time the fluid receiving port receives the continuous flow* of the biological fluid..." Such element is absolutely not taught by the '395 reference, and claims 1-2 and 4-6 are therefore not anticipated. Clearly, the *Office is factually wrong* in her assertion and the applicant therefore requests that the *finality be withdrawn and a new office action be issued*. Should the Office insist that Robinson et al. teach the above limitation, the applicant requests specific reference to this teaching.

### 35 USC § 103

**Claim 3** was rejected under 35 USC § 103 as being obvious over Robinson et al. (U.S. Pat. No. 5,374,395). The Applicant disagrees. Among other things, Robinson et al. fail to teach each and every element present in claim 1 and such defect is not remedied by the narrowing in scope of claim 3.

Moreover, the '395 *expressly teaches in numerous places against continuous influx of a sample fluid while a continuous efflux of depleted sample fluid is emitted*. For example, the sample container in Robinson is disposed in a carousel that assists in transportation of the container within the device. Clearly, as the sample is placed into the container before the container is loaded into the device, continuous loading and effluent provision is not achieved (see e.g., column 35, lines 29 et seq.). Further, and more specifically, Robinson et al. teach (on column 28, lines 45 et seq., or on column 30, lines 3 et seq. and lines 62 et seq.) that all reagents and the sample remain in the container. In other passages, Robinson et al describe the container as a "closed disposable pack" (see e.g., column 31, line 17, column 42, line 24). Such teaching is

Appl No 09/977,930  
Amdt. dated Nov 18, 2005  
Reply to Office action of Sep. 20, 2005

positively against the claimed subject matter. Therefore, the Office should not consider claim 1 and 2-6 as being obvious over Robinson et al.

The applicant believes that the present claim amendments are sufficient to overcome the Examiner's concerns and believes that the claims as amended are now in condition for allowance. Therefore, the applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

RUTAN & TUCKER

By 

Martin Fessenmaier, Ph.D.  
Reg. No. 46,697  
Tel.: (714) 641-5100